

EXAMINER'S AMENDMENT

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on May 16, 2008 has been entered.

2. Applicant's amendment filed November 20, 2008 is acknowledged and has been entered. Claims 6, 7, 16-18, 22-27, 34-43, 45, 48-53, 56, 57, 59-63, 65-72, 75, 76, 82, 83, 86-88, 91-94, 97 and 99 have been canceled. Claims 73, 74 and 100 have been amended. New claim 108 has been added. Claims 1-5, 8-15, 19-21, 28-33, 44, 46, 47, 54, 55, 58, 64, 73, 74, 77-81, 84, 85, 89, 90, 95, 96, 98 and 100-108 are now pending in the present application. All rejections have been withdrawn in view of Applicant's amendment to the claims and/or comments.

3. Claims 1-5, 8-21, 28-33, 44, 100-105 and 108 are directed to an allowable product. Pursuant to the procedures set forth in MPEP § 821.04(B), claims 46, 47, 54, 55, 58, 64, 73, 74, 78-81, 84, 85, 89, 90, 95, 96, 98, 106 and 107 are directed to the process of making or using an allowable product, previously withdrawn from consideration as a result of a restriction requirement, are hereby rejoined and fully examined for patentability under 37 CFR 1.104.

Because all claims previously withdrawn from consideration under 37 CFR 1.142 have been rejoined, **the restriction requirement as set forth in the Office**

action mailed on November 26, 2004, June 29, 2007 and August 20, 2008 is hereby withdrawn. In view of the withdrawal of the restriction requirement as to the rejoined inventions, applicant(s) are advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Once the restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

4. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Maria A. Trevisan, 48207 on March 20, 2009.

5. The application has been amended as follows:

Claim 108. (Currently Amended) The [method] composition of claim 100, wherein the immunostimulatory nucleic acid has a nucleotide backbone comprising at least one phosphorothioate modification.

6. Claims 1-5, 8-15, 19-21, 28-33, 44, 46, 47, 54, 55, 58, 64, 73, 74, 77-81, 84, 85, 89, 90, 95, 96, 98 and 100-108 have been allowed and renumbered 1-52 respectively.

7. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to N. M. Minnifield whose telephone number is 571-272-0860. The examiner can normally be reached on M-F (8:00-5:30) Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert B. Mondesi can be reached on 571-272-0956. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to

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the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Art Unit 1645

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March 20, 2009